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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,109	11/30/2000	Kurt Schunke	SCHUNKE	6814

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EXAMINER

STEFANON, JUSTIN

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/727,109

Applicant(s)

SCHUNKE ET AL.

Examiner

Justin Stefanon

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 14 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 2,3, and 10 recite the limitation "the supporting structure". There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,786,107 to Crockett.

Crockett discloses a lifting mechanism 20 having a lifting arm 94 articulated to a component 42 of a piece of furniture for moving the component between two end positions, a rotary drive mechanism 44 having an output member 84 linked to the lifting arm and imparting a rotational motion relative to the component to the lifting arm, and a stationary support means 82 associated to the rotary drive mechanism and the piece of

furniture for at least partially absorbing a load moment exerted during movement of the component. The support means includes two parallel support beams 82 extending horizontally from one longitudinal side 26 to another 28 of the supporting structure, with the rotary drive mechanism positioned therebetween. The rotary drive mechanism includes a housing 90, having an end wall visible in Figure 6, and a rotary drive, described as a threaded shaft in Column 4, lines 46-48, fitted in the housing. The support means includes a fork head, shown in Figure 2 extending vertically from a plate between support beams 82, and a rod 86 received in aligned bores in the wall of the housing. The output member 84 is form-fittingly connected to the lifting arm 98, as shown in Figure 6.

6. Claims 1, and 8-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,730,494 to LaPointe et al.

Lapointe discloses a lifting mechanism<sup>1</sup> having a lifting arm 218 articulated to a component 212 of a piece of furniture, a rotary drive mechanism 136 having an output member 276 linked to the lifting arm for imparting a rotational motion to the lifting arm and stationary support means 33 associated to the rotary drive mechanism and the piece of furniture for at least partially absorbing a load moment. The out put member of the rotary drive mechanism is a rotation part with a polygonal bore, as seen in Figure 8, said lifting mechanism including two parallel lifting arms 218 and a crossbar 15 having opposite ends for interconnecting the two lifting arms and snugly fitting in and extending through the bore. The adjustment device further comprises a mounting 140 for securing the rotary drive mechanism to the supporting structure, as described in column 8, lines

53-57, and a profiled piece 221 disposed on one of the lifting arms on a side which faces the rotary drive mechanism and attached to the crossbar, as shown in Figure 10A. Lapointe further discloses, in column 7, lines 18-20, limit switches as stop means mounted to the lifting mechanism for defining end positions.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaPointe et al. in view of U.S. Patent No. 5,155,496 to Suga.

In reference to claim 12, LaPointe discloses the subject matter of claim 11, as discussed above, but do not disclose stop means including a resilient stop member. Suga discloses the use of a limit switch with resilient arm members to limit the operation range of an automatic radio antenna for a vehicle. It would have been obvious to one skilled in the art at the time the invention was made to use resilient members such as disclosed in Suga in the limit switches described by LaPointe, as resilient limit switches are a known means of defining a maximum range of operation of a moving member.

In reference to claim 13, LaPointe discloses the subject matter of claim 11, and discloses the use of an AC power source, and inherently also a power supply line, connected to the rotary drive, but does not disclose an overload relay located in the power supply line for cutting the rotary drive when a current exceeds a predetermined

value. Suga describes, in column 1, a system of using an overload switch to limit the operation range of an automatic radio antenna as an alternative to the use of limit switches. It would have been obvious to one skilled in the art at the time the invention was made to use an overload relay instead of limit switches to define the maximum range of operation of the moving members in LaPointe, as Suga teaches the two are equivalents. Furthermore, the use of an overload switch provides an added safety measure to keep the electric motor of LaPointe from overheating.

### ***Response to Arguments***

9. Applicant's arguments filed August 14, 2002 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the adjusting device is not attached to a console) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant further argues that the supporting structures of the references are not part of the piece of furniture, but they are part of the piece of furniture as broadly claimed. In response to applicant's argument that Suga is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the reference is pertinent to the particular

problem with which the applicant was concerned, i.e. protecting an electric motor used for lifting from overload and defining end points of a range of motion.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses descriptions of the use of overload switches and limit switches in adjustable beds.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Stefanon whose telephone number is 703-305-1945. The examiner can normally be reached on Monday - Friday 6 - 3:30, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on 703-308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
DAVID A. BUCCI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

js  
November 13, 2002